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PROMOTION AND PROTECTION OF HUMAN RIGHTS

Human rights and human responsibilities

Report of Mr. Miguel Alfonso Martínez, Special Rapporteur appointed by the Sub-Commission on the Promotion and Protection of Human Rights to undertake the study requested by the Commission in its resolution 2000/63*

* The executive summary of this report will be distributed in all the official languages. The report is contained in the annex to this summary and will be distributed in the original language, and in English and French.

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Executive Summary

In this preliminary report, the Special Rapporteur describes the progress made in his research on this subject. He does not, for obvious reasons, offer any conclusions here on the substance of this important question, as these will be presented in the final report on his study to be submitted for the Commission's consideration at its fifty-ninth session, due to be held in 2003.

This document begins with a brief introduction in which the author describes the proceedings in the Sub-Commission on the Promotion and Protection of Human Rights, as well as in the Commission itself and in the Economic and Social Council, which led to his appointment as Special Rapporteur entrusted with the task of preparing the study requested (Council decision 2001/285 of 24 July 2001).

The Special Rapporteur then defines some of the essential methodological parameters for his research. These first of all concern the basic scope of this first report to the Commission, and the use which will be made in his work of the terms "duties", "responsibilities", "obligations" and "community". Secondly, he explains the rationale for focusing his research on attempting to specify what are the duties (or responsibilities), as referred to in article 29, paragraph 1, of the Universal Declaration of Human Rights and in the final common preambular paragraph of the 1966 International Covenants on Human Rights, that each individual has towards the community in which he or she lives. This important question still remains to be clarified after more than half a century.

In the last part of this report the Special Rapporteur describes the progress made in his research on the subject, essentially following the proposals put forward in the note which he submitted for consideration by the Commission at its fifty-seventh session in 2001 (E/CN.4/2001/96).

With regard to the preparatory work that led in 1948 and 1966 to the adoption of the above-mentioned provisions included in the texts of the Universal Declaration and the International Covenants, the Special Rapporteur analyses in detail the relevant parts of the valuable work carried out on this same question 20 years ago by his colleague in the Sub-Commission, Mrs. Erica-Irene Daes, entitled "The individual's duties to the community and the limitations on human rights and freedoms under article 29 of the Universal Declaration of Human Rights" (E/CN.4/Sub.2/432/Rev.2).

Turning to the work of the specialized agencies of the United Nations system in this area, the Special Rapporteur reviews the contents of the Declaration on the Responsibilities of the Present Generations Towards Future Generations, adopted in 1997 by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), and looking moreover at the work of "regional" intergovernmental organizations, he examines the American Declaration of the Rights and Duties of Man (adopted in 1948 by the Ninth International Conference of American States), the African Charter on Human and Peoples' Rights (adopted in 1981 by the Organization of African Unity) and the Cairo Declaration on Human Rights in Islam (adopted in 1990 by the Organization of the Islamic Conference).

With regard to the opinions expressed by States on the subject, the Special Rapporteur firstly analyses the several dozen replies made during the 1970s to the questionnaire prepared in that connection by Mrs. Daes, and furthermore indicates that there is a need to update this information. To that end, in an appendix to this report he includes questionnaires intended not only for Member States but also for non-governmental organizations (NGOs).

Concerning the work of NGOs in this field, the Special Rapporteur focuses in particular on the contents of the draft universal declaration of human responsibilities prepared in 1997 by the InterAction Council, an organization at that time under the presidency of former German Chancellor Helmut Schmidt. He realizes, however, that the great majority of NGOs (especially those based in the developed North) are at present reluctant to define their duties or responsibilities towards the respective communities in which they are active.

Lastly, with regard to the views expressed in the scholarly literature on the subject, the Special Rapporteur takes account, in various sections of the report, of the opinions of specialists from the most diverse geographical backgrounds and of recognized international authority, including the views of those (such as Professor Theo van Boven) who did not consider it necessary or appropriate, for one reason or another, to attempt to define what these said duties (or responsibilities) might be. The Special Rapporteur will seek to reflect, in his final report, many other views taken from this important source, in particular when formulating his conclusions and recommendations in the coming year.

Annex

REPORT OF MR. MIGUEL ALFONSO MARTÍNEZ, SPECIAL RAPPORTEUR APPOINTED BY THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS TO UNDERTAKE THE STUDY REQUESTED BY THE COMMISSION IN ITS RESOLUTION 2000/63

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INTRODUCTION

1. In its resolution 2000/63 of 26 April 2000, the Commission on Human Rights requested the Sub-Commission on the Promotion and Protection of Human Rights to undertake "a study on the issue of human rights and human responsibilities" and to submit an interim study to the Commission at its fifty-seventh session and a complete study at its fifty-eighth session (para. 2). It also decided to continue its consideration of that question at its fifty-seventh session under the same agenda item (para. 3).

2. The Commission approved that resolution after a relatively brief but substantive debate on its content.[1]

3. In response to this request from its higher body, the Sub-Commission adopted (by a roll-call vote of 14 votes to 4, with 5 abstentions) its decision 2000/111 of 18 August 2000. By that decision, acting on the request made by the Commission in paragraph 2 of its resolution 2000/63, the Sub-Commission decided, firstly, "to appoint Sub-Commission member Miguel Alfonso Martínez to undertake a study of the issue of human rights and human responsibilities". It also decided to request the Commission, at its fifty-seventh session (due to be held in 2001), to recommend that the Economic and Social Council authorize Mr. Alfonso Martínez to undertake the study and to submit a preliminary report to the Commission at its fifty-eighth session (due to be held in 2002) and a final report at its fifty-ninth session (due to be held in 2003). The main points contained in this decision by the Sub-Commission were reflected in draft decision 14 which the Sub-Commission recommended to the Commission for adoption at its fifty-second session.[2]

4. At its fifty-seventh session, the Commission adopted draft decision 14 recommended by the Sub-Commission without making any change to the text.[3] It did so after a roll-call vote of 34 to 14, with 4 abstentions, which was requested in the name of the group of States members of the European Union which were members of the Commission.[4] In this decision, the Commission recommended that the Economic and Social Council should confirm retrospectively the appointment of Mr. Alfonso Martínez - already effected by the Sub-Commission in exercise of the powers vested in it - to undertake the study requested by the Commission, and set new dates for the submission to it of his preliminary report and of his final report (at the fifty-eighth and fifty-ninth sessions, respectively).

5. The Economic and Social Council, by its decision 2001/285, adopted - also without any change - the text recommended by the Commission. It may be noted that the Council approved the recommendation of its subsidiary body by consensus, without a formal vote. Unlike during the proceedings shortly before in the Commission, none of its members considered it necessary or useful to request a formal vote.

6. This interim report is submitted for consideration by the Commission at its fifty-eighth session pursuant to the above-mentioned Council decision 2001/285.

II. METHODOLOGICAL STARTING POINTS

A. Content of the interim report

7. The Special Rapporteur has commenced his work proceeding on the basis of certain methodological premises. It should at the outset be noted that the content of this preliminary report is principally determined by the technical terminology chosen by the Commission and the Council to differentiate this first report from the definitive report requested for the coming year. It will not, therefore, contain any conclusions and will only exceptionally include some recommendations that will generally be of a procedural nature and related to the advancement of the Special Rapporteur's research. The conclusions and final recommendations of this study will be set forth in the definitive report to be submitted to the Commission at its fifty-ninth session.

8. The present report will thus be basically devoted to reflecting the progress which the Special Rapporteur appointed for its preparation has been able to make in his necessary research over the barely seven months that have passed since the Council authorized him to begin it. Within this brief period of time, the Special Rapporteur has found that the bibliographical and documentary sources identified on this subject already go well beyond his original expectations.

9. Secondly, it should be recalled that the Special Rapporteur submitted, for consideration by the Commission at its fifty-seventh session, a brief note in which he set out the main objectives of his research work.[5] Unfortunately, the rapid pace of the Commission's work, which in many cases prevents extensive debate and in-depth reflection even on issues of capital importance, made it impossible to consider that note last year under agenda item 17.

10. Nevertheless, the wide margin of approval given to the Sub-Commission's initiative has permitted the Special Rapporteur to move forward on the understanding that the Commission (or, at least, a large majority of its members) had no fundamental objections concerning the relevance of the basic guidelines indicated for the research to be conducted on the subject. It is those guidelines, therefore, which have served essentially to direct his efforts to date.

11. Furthermore, as may be gathered from the above-mentioned note, the study authorized last July by the Council, at the request of the Commission, has been largely focused on attempting a possible definition of the individual's duties or responsibilities towards the society in which he or she lives, as well as towards the other individuals constituting that same social milieu.

12. There is quite clearly a sharp contrast between, on the one hand, the very extensive bibliographical materials published on the subject of human rights, the enormous conceptual advances made in this respect and the variety of practical actions which human rights and fundamental freedoms have already warranted, and, on the other, the lack of precise formal definitions concerning what duties arise for each individual under article 29, paragraph 1, of the Universal Declaration of Human Rights and the last paragraph of the common preamble to the International Covenants on Human Rights.

13. Consequently, the basic lines of investigation suggested for this study include an examination, on the one hand, of the work carried out originally within the framework of the United Nations on this subject (relating essentially to article 28 and article 29, paragraph 1, of the Universal Declaration of Human Rights and to the fifth and last paragraph of the common preamble to the International Covenants on Human Rights) and, on the other hand, the work which has since been conducted on this same subject by intergovernmental organizations, both within the United Nations system itself and outside it (essentially at the regional level).

14. In his note the Special Rapporteur also underlined the need to examine the advances made on this topic by some non-governmental organizations and the opinions put forward on certain essential aspects of the subject by other such organizations. Lastly, that document pointed to the importance of reviewing the comments on this issue both by Governments and by the scholars who, at the international level, have shown interest in studying the matter in greater depth.

15. The Special Rapporteur has been able to make progress in these few months on practically all the key lines of investigation, although, as will be seen, the progress was not equal in every one of them.

16. It should further be pointed out that, as happens quite often with this kind of research, the more time is devoted to a topic, the more one tends to discover relevant new aspects and conceptual or institutional dimensions that were either not foreseen in the original approach to the subject matter or were omitted completely from the study plan initially outlined.

17. This first report to the Commission therefore includes the initial results of the examination considered necessary into how the question of "duties/responsibilities" has been treated in some of the world's major religions.

18. The present report likewise takes up the points which were seen as most relevant in the work carried out between 1986 and 1998 by another United Nations body[6] on the same aspect of the topic to be addressed (namely, the duties and/or responsibilities of each individual towards the community in which he or she lives).

19. In this context, it should be indicated, lastly, that the only facet of the research originally envisaged on which relatively little progress could be made relates to the views that may currently be held by the Governments of Member States concerning the duties and/or responsibilities which each person has towards the society in which he or she lives. Later in this preliminary report, the Special Rapporteur will put forward recommendations on how to remedy this shortcoming.[7]

B. Terminology: "duties", "responsibilities" and "obligations"

20. It will furthermore be necessary to consider an essentially semantic question whose importance has already been signalled by the Special Rapporteur in the note which he submitted to the Commission at its fifty-seventh session[8] and which relates to the usage, in the discussions and action of the United Nations, of the terms "duties", "responsibilities" and "obligations" of the individual in this field of human rights.

21. It may be noted to begin with, for the purposes of this study, that the *Diccionario de la lengua española*, in its most recent edition,[9] defines "*deber*" ("duty") as follows:

> 1. *Aquello a que está obligado el hombre por los preceptos religiosos o por las leyes naturales o positivas.*

22. The definition of "*responsabilidad*" ("responsibility") reads:

> 2. *Deuda, obligación de reparar y satisfacer, por sí o por otra persona, a consecuencia de un delito, de una culpa o de otra causa legal.*
>
> 3. *Cargo u obligación moral que resulta para alguien del posible yerro en cosa o asunto determinado.*

23. The same dictionary offers many different meanings for the word "*obligación*" ("obligation"), including:

> 1. *Aquello que alguien está obligado a hacer.*
>
> 2. *Imposición o exigencia moral que debe regir la voluntad libre.*
>
> 3. *Vínculo que sujeta a hacer o abstenerse de hacer algo, establecido por precepto de ley, por voluntario otorgamiento o por derivación recta de ciertos actos.*[10]

24. It is to be noted here that, in one form or another, the definitions of each of the above three terms include the sense of "obligation" and that in all of them such an "obligation" may be regarded as deriving either from ethical/moral considerations or from the strictly legal framework of the positive law in force in the country concerned.

25. Furthermore, everything indicates that in the discussions which preceded the adoption both of the Universal Declaration of Human Rights and of the International Covenants on Human Rights, many of the participants used these three terms (especially "duties" and "responsibilities") interchangeably to refer to the same things. The official Spanish text of the fifth paragraph of the common preamble to the two International Covenants on Human Rights even goes so far as to refer to the "duties" of the individual towards other individuals and towards "the community to which he belongs" as giving rise to an "obligation" ("*obligación*").[11]

26. Despite the foregoing, the Special Rapporteur considers that, as regards both the text of article 29, paragraph 1, of the Universal Declaration of Human Rights and that of the fifth common preambular paragraph of the two International Covenants on Human Rights, it would be going beyond his mandate to analyse what might be the "obligations" of every individual to the community or society in which he or she lives. The conclusion he has reached is that such obligations (or legally enforceable duties) are clearly laid down in the relevant provisions of the internal legal order of each State.[12]

27. With regard more particularly to the text of the Universal Declaration of Human Rights, the meaning of paragraph 1 of article 29, cannot be appreciated without the reference which is made to domestic law, in paragraph 2 of the same article, as the basic legal framework giving rise to the obligations *strictu senso* that each individual has to his or her community. However, the declaratory (non-binding) nature of the Universal Declaration of Human Rights, as a basic instrument thereon, is not consonant with the enforceable character that, for the Special Rapporteur, an "obligation" has in the context of his study.

28. The Special Rapporteur therefore feels that it would be proper to use interchangeably in this study only the terms "duties" and "responsibilities". These terms appear to him to be much more suitable for attempting to specify actions and attitudes that are adopted and appraised, generally speaking, at the non-legal level, in the light of ethics and morality, and not according to the narrower and more formal requirements of positive law. That latter framework nonetheless - in the Special Rapporteur's view, and in the context of his mandate - is ultimately the only appropriate framework to be considered as the one giving rise to "obligations".

29. Accordingly, the present study will be focused only on seeking to identify those duties/responsibilities which might be considered to be attributable to everyone - in the words of the Universal Declaration of Human Rights - without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether or not, in the community/society in which the persons live, they carry out public functions, or whether they act therein individually or in association with others. Such duties/responsibilities would be applicable with respect to the community in which the individual lives and his or her personality is developed, as well as to other individuals living in the same community.

30. As regards the word "community" - used both in article 29, paragraph 1, of the Universal Declaration of Human Rights and in the fifth common preambular paragraph of the two International Covenants on Human Rights - the Special Rapporteur considers that this term must be interpreted in the widest possible sense.

31. In the Special Rapporteur's opinion, the term includes both the family community of each person and the ethnic, religious or cultural community, whether national or other, to which he or she might belong within a multiple society, and, of course, would also include that same society as a whole, which is organized politically at the internal level, and as such forms part of the international legal community.

32. It should be borne in mind, moreover, that this same paragraph of the preamble to the International Covenants on Human Rights likewise makes mention of the fact that the "individual" also has duties "to other individuals", without limiting those possible duties only to other persons living in the same community/society.

33. Lastly, it should be emphasized that this attempt to specify what are such duties (or responsibilities) will proceed clearly from the premise that they arise and are applicable - essentially, and as a general rule - at the ethical/moral level.

34. The foregoing does not, of course, rule out the possibility that in due course some of those duties and certain of those responsibilities may also be established and regulated as formal legal obligations, applicable not only from the standpoint of equity, ethics, justice or morality, but also under the positive law of the country concerned, as standards created in the internal order, or by obligations contracted at the international level.

C. Reason for attempting to define formally the duties (or responsibilities) of individuals towards the community in which they live and towards other members of that community

35. It does not seem fitting to conclude this methological introduction without explaining why there is a need for such definitions. We should point out, to begin with, that speaking of human rights and fundamental freedoms separately from life within society would be simply unthinkable. In fact, the Universal Declaration of Human Rights and the International Covenants on Human Rights leave us in no doubt at all that individuals indeed have duties (or responsibilities) towards the community/society which is home to them. This is the only environment that can not only afford everyone the possibility of fully developing his or her personality, but also ensure the realization of the rights and freedoms enshrined in the Universal Declaration.[13]

36. Nevertheless, as already mentioned, unlike in its presentation of the human rights recognized for each person (which it enunciates one by one, in an orderly and detailed manner, in articles 2 to 28), the Universal Declaration does not spell out those duties (or responsibilities) to which a generic reference is made in article 29, paragraph 1.[14]

37. It is worth noting that this omission is, for some,[15] one of the most singular merits of the Universal Declaration. Others, however, consider this to be a clear deficiency which ought to have been remedied in 1948 or which can and should be corrected today, as soon as possible, even without necessarily beginning a formal process of amendment of the Universal Declaration.

38. Regardless of the position taken in this respect, the possible negative practical implications of such an omission have been very evident, not least in the context of an important process of standard-setting in this field which took place within the United Nations during the past decade.[16] One of the most noteworthy aspects of that protracted and complex process was the time which over many years actually had to be spent on drafting a chapter devoted precisely to those possible duties (or responsibilities) in the text of the document, without it having been possible, after all those efforts, to complete that exercise adequately.[17]

39. Whatever reasons those who in the first years after the Second World War drafted the Universal Declaration may have had for this silence, if the Special Rapporteur has correctly understood the decisions taken on this matter by the higher bodies, it seems to him to be beyond all doubt that the advisability of filling such an obvious gap was precisely what led both the majority of the members of the Commission and all the members of the Council (in its important consensus on decision 2001/285 authorizing this study to be undertaken) to favour providing a definition of what such responsibilities (or duties) are.

III. PROGRESS MADE IN THE RESEARCH ON THIS SUBJECT

A. Preparatory work relating to article 29, paragraph 1, of the Universal Declaration of Human Rights and the fifth common preambular paragraph of the International Covenants on Human Rights

40. The most thorough and comprehensive effort of which the Special Rapporteur is aware to study this important matter is the one made 20 years ago by his colleague in the Sub-Commission, Mrs. Erica-Irene Daes,[18] who, as Special Rapporteur of the Sub-Commission, was entrusted with that task by the Economic and Social Council. The Special Rapporteur wishes to record expressly and publicly the profound recognition which is due for the work carried out by his eminent colleague, which took eight years to complete and has constituted a key starting point for his own work.[19]

41. It should be emphasized that acknowledgement of the fact that individuals, while holding particular human rights intrinsic to their existence, have particular duties in relation to the social entity in which they live has been a constant feature in the work of the United Nations in this area since even before its own constituent Charter entered into force in October 1945.[20]

42. With respect to article 29, paragraph 1, of the Universal Declaration, Mrs. Daes begins (para. 1) by explaining that no definition of the duties mentioned is given "for the simple reason that the cardinal object of the Declaration is the protection of the rights of individuals in relation to the State [... and] there is a need for such protection, whereas there is no imperative necessity to safeguard the State against individuals".

43. This explanation does not appear to suffice, however, not only because in the remaining part of the same chapter the author endeavours, precisely, to define what, in her understanding, are those duties which individuals have to their community/society, but also because it is not, strictly speaking, appropriate in this context to identify "community" (the term used in the Universal Declaration) entirely with the State.

44. In paragraphs 2 and 3 of the study it is observed, quite rightly, that article 29, paragraph 1, of the Universal Declaration and the fifth preambular paragraph of the International Covenants on Human Rights both contain provisions which are essentially "of a moral nature".

45. In paragraphs 6 and 7 it is concluded, with ample evidence given further on (paras. 9 to 47) that the formulation of article 29, paragraph 1, of the Universal Declaration "constitutes a compromise text [... which] illustrates the difficulties faced in arriving at a proper and balanced wording by the delegations representing different political, legal, economic, social and cultural systems at the Conference of San Francisco". It is further emphasized that this preparatory work "also shows the different approaches to the problem of providing for human duties in the Declaration".

46. The author draws attention, at the end of paragraph 7, to "the importance attached by [the delegations which took part in the drafting of the Declaration] to the relationship between human rights and human duties"[21] and in other paragraphs[22] mentions various initiatives which were advanced in the preparatory work in the Commission on Human Rights, offering

formulations on what would constitute the duties of individuals to their "community", and also explains (para. 20) that "[i]n support of the proposals referring to the duties of the individual, it was stated that the duties which man owed to society should not be mentioned if those duties were left undefined".[23]

47. A similar variety of initiatives on this question emerged when the Third Committee of the General Assembly of the United Nations discussed the text of the draft declaration.[24] According to Mrs. Daes, "it was emphasized that it was not possible to draw up a declaration of rights without proclaiming the duties implicit in the concept of freedom which made it possible to set up a peaceful and democratic society. Without such a provision, all freedom might lead to anarchy and tyranny [and] hence the great importance of [the present article 29, paragraph 1]".[25] In addition, it was felt to be very important "to find the proper balance between the interests of the individual and the interests of society [...] Individual liberty had therefore to be balanced with the liberty of other individuals and with the reasonable demands of the community".[26]

48. It should be pointed out that during its negotiations in 1948 the Third Committee likewise had great difficulty in finding a wording that would achieve a consensus among all participants. There appears to have been no difficulty at the time in recognizing that individuals had duties/responsibilities to their social environment but, despite the various formulations proposed (some withdrawn, others rejected after a vote) to arrive at precise wordings in this respect, the Committee finally adopted - by 35 votes to none, with 6 abstentions - the generic text which now stands as article 29, paragraph 1, of the Universal Declaration of Human Rights.

49. Furthermore - and still according to the account of the preparatory process offered by Mrs. Daes[27] - the essential work of drafting the present fifth and last common preambular paragraph of the two International Covenants on Human Rights was done during the fifth to eighth sessions of the Commission between 1949 and 1952.

50. It appears from the painstaking research of Mrs. Daes that the definitive text of this paragraph was primarily the outcome of an idea originally put forward by the delegations of Australia and Sweden during the eighth session of the Commission - as an amendment to the text of the preamble proposed by the delegation of the United States of America, which suggested a new paragraph that contained the basic idea of mentioning the intended subjects of the legal norms of the covenant then being elaborated.[28]

51. The movers argued that "the draft covenant [...] was concerned with the obligations of States; however, as States were the sum of individuals, the latter must cooperate if the covenant was to be implemented".[29] For their part, Chile and Yugoslavia - which had already likewise tabled an amendment to the preamble suggested by the United States of America - accepted the Australian-Swedish proposal, thereby opening up the way for this final paragraph of the preamble to be adopted unanimously by the Commission.

52. This still left undefined those "duties" to their community/society and to its other members that - according to all the drafters - each of the beneficiaries of the rights established in the Covenants have in States which are parties thereto.[30]

53. It is to be noted that in the conclusions in this respect included in her study,[31] Mrs. Daes considered it fitting and proper to contribute to defining such duties and to filling this gap in the provisions of the Declaration and the Covenants.

54. Thus, the duties/responsibilities and obligations of every person to the community are listed, [in section G of the conclusions, as follows:][32] to respect international peace and security; to refrain from any propaganda for war; to refrain from advocacy of national, racial or religious hatred; duties to humanity (those derived from articles I and VI of the Convention on the Prevention and Punishment of the Crime of Genocide and articles I and III of the International Convention on the Suppression and Punishment of the Crime of Apartheid); to observe both international law (in particular the provisions of the Charter of the United Nations, the International Covenants "and other international instruments relating to human rights") and international humanitarian law; to promote and observe human rights and fundamental freedoms; to respect "the general welfare;"[33] to review and oppose demands of the community that are incompatible with the purposes and principles of the Charter of the United Nations and the principal international human rights instruments; to protect the human environment; and to participate "actively" in defining and achieving the common goals of social progress and development of the community.[34]

55. More specifically, Mrs. Daes considers that "judges of the International Court of Justice and experts of special bodies" (including, in the Special Rapporteur's opinion, human rights bodies) have the duty to exercise their functions with independence, impartiality and objectivity.[35]

56. Among the duties/responsibilities of individuals to other members of their community, Mrs. Daes lists the following: to respect and protect human rights and fundamental freedoms, including the rules concerning prohibition of torture and protection of human dignity; to exercise political rights as citizens to establish a Government "by free popular vote"; to promote culture, and to lend mutual help and solidarity (protection of the weaker against the stronger and the oppressed against the oppressor).[36]

57. In the most valuable contribution of Mrs. Daes on this subject, it may be noted, lastly, that one of the three recommendations which she makes in her final report is that the Economic and Social Council should "authorize the Sub-Commission to prepare a draft declaration on the principles governing the responsibilities of the individual in connection with, in particular, the promotion and observance of human rights and fundamental freedoms in a contemporary community".[37]

58. Unfortunately (in this Special Rapporteur's view), neither the Commission nor the Council considered it necessary (or even useful) to take any action on the matter and it was not until the recent adoption of resolution 2000/63 by the Commission that any attention was given to it by the relevant bodies in the United Nations.

B. Specialized agencies of the United Nations system

59. In his research to date, the Special Rapporteur has found only one instance of a normative text on this subject prepared by one of the specialized agencies. It is a declarative, non-legally binding instrument, which was adopted on 12 November 1997 at the twenty-seventh plenary meeting of the twenty-ninth session of the United Nations Educational, Scientific and Cultural Organization (UNESCO) General Conference, held in Paris in October and November 1997, and entitled "Declaration on the Responsibilities of the Present Generations Towards Future Generations".[38]

60. The text of this Declaration proclaimed by the UNESCO General Conference is of particular interest for both its preamble and its substantive provisions. The preamble not only expresses States Members' concern in the face of the "vital challenges" looming ahead for the twenty-first century, but also stresses that full respect for human rights and the ideals of democracy and the establishment of "new, equitable and global links of partnership and inter-generational solidarity" through "increased international cooperation" constitute essential and necessary bases for the perpetuation of humankind and the protection of the interests of future generations, and that such an approach will help to ensure that the present generations "are fully aware of their responsibilities towards future generations".

61. The Declaration also recognizes that decisions need to be taken on present-day problems such as "poverty, technological and material underdevelopment, unemployment, exclusion, discrimination and threats to the environment" in order to solve them "in the interests of both present and future generations". According to the Declaration, the task of protecting the needs and interests of future generations, particularly through education, is "fundamental to the ethical mission of UNESCO", which therefore declares itself "convinced" that there is a moral obligation on present generations to formulate "behavioural guidelines" within a broad, future-oriented perspective.[39]

62. The substantive provisions of the Declaration describe the following duties/responsibilities of "present generations" towards themselves and, in particular, towards "future generations":[40] to ensure that the needs and interests of each generation are fully safeguarded; to make every effort to ensure, with due regard to human rights and fundamental freedoms, that present and future generations enjoy full freedom of choice as to their political, economic and social systems and are able to preserve their cultural and religious diversity; to respect the dignity of the human person by not undermining the nature or form of human life; to bequeath to future generations a planet that is not irreversibly damaged by human activity; to strive for sustainable development and the preservation of the quality of the environment and the natural resources necessary for the development of human life; to protect the human genome and safeguard biodiversity; and to ensure that scientific and technological progress does not impair or compromise the preservation of the human and other species.

63. The Declaration also refers to the duty/responsibility to preserve the cultural diversity of humankind "with due respect for human rights and fundamental freedoms"; and to identify, protect and safeguard the common cultural and material heritage of humankind and use it in such

a way as to avoid compromising it irreversibly. All generations alike have a duty/responsibility to live together in peace in order to spare future generations from the scourge of war; and to use education to foster peace, justice, understanding, tolerance and equality tor the benefit of present and future generations; and present generations have a duty to "refrain from taking any action or measure which would have the effect of leading to or perpetuating any form of discrimination for future generations".

64. A preliminary observation on this text is that the points which it makes concerning environmental conservation and the rational use of existing natural resources (arts. 4 and 5) bear a marked similarity to those made on the same issues by indigenous peoples in many parts of the world.

65. Lastly, the Special Rapporteur wishes to point out that lack of time has prevented him from investigating any follow-up there might have been on this important Declaration within the various parts of UNESCO.

C. "Regional" intergovernmental organizations

66. In February-March 1945 - nearly a year before the United Nations began work on drafting the Universal Declaration of Human Rights - at the Chapultepec Conference (Mexico City, 21 February to 8 March 1945), the countries of the Americas requested the Inter-American Juridical Committee to prepare a non-binding instrument, which, on its adoption three years later, was to mark the first step in the establishment of a human rights promotion and protection regime for the region.[41]

67. The original title of the document was "Declaration of the International Rights and Duties of Man", but by the time it was adopted at the Ninth International Conference of American States in Bogotá, Colombia, it had acquired its definitive title, the "American Declaration of the Rights and Duties of Man".[42]

68. The American Declaration consists of a preamble and 38 articles, organized in two chapters: chapter 1 (arts. I to XXVIII) deals with individual rights; chapter 2 (arts. XXIX to XXXVIII) deals with individuals' duties towards themselves, their families, society as a whole, their fellow citizens, their own community, the State of which they are nationals and any State in which they are foreigners.

69. The reason why the preamble concentrates mainly on individuals' duties (or responsibilities) may be that the linkage between rights and duties is a concept that has always had wide currency in the region, not only in the legal sphere but also in the area of ethics and morals. It is no coincidence that the second preambular paragraph states that "[R]ights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty". The paragraph perfectly summarizes concepts that, in the Special Rapporteur's opinion, are still widespread, more than half a century later, in the countries of the geographical region where the text originated.[43]

70. As regards the individual's duty towards him/herself, the American Declaration establishes a duty to acquire at least elementary education and to work to the extent of one's capacity and possibilities to obtain the means of livelihood. As regards duties towards the family, it establishes the duty of parents to aid, support and protect their minor children, and the duty of children to honour, aid, support and protect their parents when needed.

71. With regard to the individual's duties towards society as a whole, the American Declaration notes the duty to conduct oneself in relation to others so that each and every one may fully form and develop his or her personality, and the duty of able-bodied persons to render whatever civil and military service their country may require for its defence and preservation and, in case of public disaster, to render such services as may be in their power; individual's duties towards fellow-citizens include the duty to vote in the elections of the country of which they are nationals, when they are legally capable of doing so.

72. Duties towards the community include - again according to the American Declaration - the duty to serve in any public office to which one may be elected, to cooperate with the community with respect to social security and welfare, and to work for the benefit of the community, as far as one's capacity and possibilities permit. Duties towards the State include the duty to cooperate with the authorities with respect to social security and welfare, in accordance with one's own abilities; and the duty - or rather the obligation, in the terminology used in this report - to pay the taxes established for the support of public services and, in general, to obey the law and other legitimate commands of the authorities in one's country. This last obligation likewise applies in a State where one is a foreigner; the individual also has a duty to refrain from taking part in political activities that, according to law, are reserved exclusively to the citizens of a foreign State where he or she is resident.

73. As will be clear from the foregoing, the list of what were considered every individual's social duties (or "responsibilities"), at the time the American Declaration was adopted in Bogotá, was quite exhaustive. Yet if the text is compared with another one dealing with the same area, adopted 20 years later - the American Convention on Human Rights (Pact of San José)[44] - we find that the latter has surprisingly little to say.

74. The Pact of San José devotes only one article - article 32 - to "personal responsibilities". Entitled "Relationship between duties and rights", article 32 reads, word for word, as follows:

> "1. Every person has responsibilities to his family, his community, and mankind.
>
> 2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society."

75. Although broader in scope than article 29, paragraph 1, of the Universal Declaration, or the last preambular paragraph of the International Covenants, the language follows the pattern already noted in those texts, in not defining the duties in question, and including the vague formulation "the just demands of the general welfare". In addition, as Faúndez Ledesma perceptively notes,[45] paragraph 1 of article 32 does not match the title, since it fails to establish the "relationship" between duties and rights.

76. In addition to the two Latin American instruments referred to above, mention should be made in this section of the African Charter on Human and Peoples' Rights (Banjul Charter), which was adopted on 27 July 1981 at the eighteenth session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU) held in Nairobi.[46]

77. The Banjul Charter devotes the whole of chapter II (arts. 27 to 29) to a specification of what the Heads of State and Government considered to be the duties of "every individual". Article 27 establishes duties not only towards the individual's family but also towards "society, the State and other legally recognized communities and the international community". Although a number of those duties (or responsibilities) are in reality legal obligations, the scope of this text is particularly broad.

78. Paragraph 2 of article 27 establishes the first of those duties by implication, i.e. the individual's rights must be exercised "with due regard to the rights of others, collective security, morality and common interest". This formulation is an example of the marked difference between the African approach to the rights/duties dichotomy in the field of human rights and the basically individualist approach characteristic of liberal democratic thought on this issue.

79. The Charter also establishes a duty to respect fellow beings and consider them without discrimination (art. 28), and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

80. Lastly, article 29 establishes duties towards the family: to preserve its harmonious development and to work for cohesion and respect of the family, and to respect parents and maintain them in case of need; towards society: to work and to pay taxes imposed by law in the interest of the society, to preserve and strengthen social and national solidarity and develop relations with other members of society in a spirit of tolerance, dialogue and consultation, and, in general, to help promote the moral well-being of society; towards the international community: to serve it by placing one's physical and intellectual abilities at its service, and to preserve positive African cultural values; towards the State to which one belongs: not to compromise its security, to preserve and strengthen national independence and the territorial integrity of one's country, and to contribute to its defence in accordance with the law; and towards the international community: to contribute to the best of one's abilities, at all times and at all levels, to the promotion and achievement of African unity.

81. Although the Organization of the Islamic Conference (OIC) is by definition not a "regional organization" and, indeed, has a scope that extends beyond any one region of the world, volume II, of the United Nations publication *Human Rights: A Compilation of International Instruments*[47] on regional instruments, includes the Cairo Declaration on Human Rights in Islam, adopted in Cairo on 5 August 1990 (14 Muharram 1411 A.H.) at the Nineteenth Islamic Conference of Foreign Ministers.

82. The relationship between the individual's rights and duties is made clear in several provisions of the Cairo Declaration. According to article 1, "[a]ll men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination [...]", and

according to article 2, "[l]ife is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to protect this right from any violation [...] The preservation of human life throughout the term of time willed by God is a duty prescribed by Shariah".

83. Article 6 states that woman is equal to man in human dignity and has rights to enjoy as well as duties to perform; she has her own civil identity and financial independence, and the right to retain her name and lineage. It also stipulates that the husband is responsible for the support and welfare of the family.

84. Similarly, articles 8 and 9 each refer to obligations and duty ("commitment") in connection, respectively, with the individual's legal capacity and with the duty to promote respect for and the defence of both rights and obligations.

85. Lastly, before ending this review of "regional" instruments that define or make reference to the individual's duties (or responsibilities) in the field of human rights, the Special Rapporteur would note that an as yet incomplete search of European texts in this area has yielded one reference, found in the Helsinki Final Act, adopted on 1 August 1975 at the Conference on Security and Cooperation in Europe, held in the Finnish capital.

86. The text of section 1 (Declaration on Principles Guiding Relations between Participating States), principle VII (Respect for human rights and fundamental freedoms, etc.) includes the following: "[The participating States] confirm the right of the individual to know and act upon his rights and duties in this field [of human rights and fundamental freedoms]". In his research to date, the Special Rapporteur has been unable to find any definition whatsoever of the duties referred to in the above-mentioned text, in the documents relating to what became known as the "Helsinki process".

D. Opinions of the Governments of States Members and non-members of the United Nations

87. Between August 1975 and October 1976, in response to a questionnaire sent to Governments by the Secretary-General on behalf of Mrs. Daes, Special Rapporteur entrusted with the task of carrying out the study in question, 25 States answered questions relating to the individual's duties/responsibilities to the community/society.[48] Nearly all of them indicated that, according to their domestic legislation, individuals under their jurisdiction had a wide variety of "duties" towards the "community". In many cases, however, the term "duties" was used not only to designate legal obligations but also to refer to duties of an ethical nature. Generally speaking, the term "community" was also given a very broad meaning in these responses.

88. Of the 25 States that responded, 15[49] drew in one way or another, and with more or less emphasis, a clear correlation between the rights and freedoms recognized in their legislation and the duties/responsibilities (or obligations) of the holders of those rights/freedoms towards the community/society. The only response to directly call into question this correlation, describing it as a "fallacy", was the one sent by the Federal Republic of Germany on 13 June 1976.

89. Mrs. Daes's analysis also includes the constitutional provisions of 26 countries in this regard. At that time, a large number of these contained titles, chapters, sections or specific articles whose headings linked rights with duties.[50]

90. In more recent times, albeit in a very particular context,[51] a number of Member States have given their opinions on this subject. Those in favour of attempting to define every individual's duties/responsibilities towards his or her social environment were nearly all countries of the South; the countries of the North were extremely reluctant even to entertain the possibility of including such definitions in a modern human rights instrument. The prevailing opinion among the latter was that it was not necessary nowadays to clarify any further the current generic formulation of paragraph 1 of article 29 of the Universal Declaration of Human Rights.[52]

91. Given the enormous differences of opinion, the outcome of this exercise in the view of this Special Rapporteur, cannot be judged positive. He therefore believes that it would be useful to send another questionnaire, short, simple and direct, to Member States, in order to canvass a wider range of current opinion on this sensitive topic.

92. The annex to this report contains a text which the Special Rapporteur formally proposes should be sent to Member States and relevant non-governmental bodies and organizations, in order to establish a broader basis on which to assess the current position of a wide range of international actors on this sensitive issue.

E. Teachings on this subject of some of the world's major religions

93. Scarcely had the Special Rapporteur embarked on this study when he became strongly convinced - no doubt because he himself is, in religious terms, a non-believer - that an investigation into a subject with such a clear ethical and moral dimension could never be fully comprehensive if it did not explore, as far as possible, the teachings of the major religions that have won the faith of billions of people on all continents.

94. Unfortunately, the Special Rapporteur has had few opportunities to do so and has made progress in this area only with regard to the tenets of the Roman Catholic and Apostolic Church. He hopes, however, that in the second phase of his research he will able to examine at first hand the teachings of other religions and include the results of his inquiries in his final report.

95. According to Holy Scripture, the basic framework for human life is the human being's duty towards God and society. The Old Testament views human existence and political life from a community perspective, rather than an individual one. This is well illustrated in the books of the prophets Isaiah, Jeremiah and Hosea, which deplore not only the fact that the children of Israel have moved away from God, but also their desire for wealth and the way that they ignore the needs of weaker and less fortunate members of society. These books carry a clear message of social justice.[53]

96. In the New Testament, Jesus conveys the same message in the well-known parable of the Good Samaritan,[54] whose central message is the individual's responsibility towards society, in the person of his or her neighbour. The epistle of James[55] contains stern warnings against the

unbridled and selfish individualism of the rich who forget their social duties. The social responsibilities of the individual were also central to the classical political theory developed by the Church in the later stages of the Roman Empire and incorporated thereafter into the Augustinian Civitas Dei.

97. This tradition was continued in the Second Vatican Council convened by Pope John XXIII in 1962, the documents of which include the Pastoral Constitution, *Gaudium et Spes*, on the Church in the modern world.[56] The notion of individual social responsibility is emphasized in paragraphs 29 to 32. The relevance of paragraph 31 to the subject of the present study is abundantly clear.[57]

98. Lastly, it is important to note that a number of Papal encyclicals have highlighted on more than one occasion the duties (or responsibilities) of the human person towards his or her social environment. Two examples are *Mater et Magistra* (1962) and *Pacem in Terris* (1963), both of which were promulgated by John XXIII himself.[58]

99. *Pacem in Terris*, written only two months before the Pope's death, is of particular importance. It is remarkably ambitious in scope, covering the following questions: firstly, relationships between individuals in human society; secondly, citizens' relationships with public authorities in each State; thirdly, States' relationships with one another; and, lastly, the relationship between individuals and States, and the world community of all peoples that needs to be established urgently, for the universal common good. The encyclical starts by postulating that, in the order that should exist between individuals, every person has both rights and duties, and it attaches particular value to personal dignity (paras. 8-10). There follows a summary of what should be considered human rights, and it is no coincidence that this begins (para. 11) with the right to life and a worthy standard of living[59].

100. The encyclical also mentions and describes the rights to a good reputation, to pursue truth and culture (paras. 12-13), and to religious worship (para. 14), rights relating to family life (paras. 15-17) and to the economic sphere (paras. 18-20), the rights of assembly and association (paras. 23-24) and of residence and emigration (para. 25), the right to take part in public life (para. 26) and the right to legal protection (para. 27). It also recognizes the right to private ownership of property (para. 21), and deems it "opportune to point out" (para. 22) that "there is a social duty essentially inherent in" this right, a long-standing tenet of Rome.

101. One major reason why *Pacem in Terris* is of such importance in this area is that it establishes an indissoluble link between human rights and human duties. This relationship is described thus in paragraphs 28 and 29:

> Rights and duties necessarily linked in the one person
>
> 28. The natural rights with which We have been dealing are, however, inseparably connected, in the very person who is their subject, with just as many respective duties; and rights as well as duties find their source, their sustenance and their inviolability in the Natural Law which grants or enjoins them.

> 29. For example, the right of every man to life is correlative with the duty to preserve it; his right to a decent standard of living with the duty of living it becomingly; and his right to investigate the truth freely, with the duty of seeking it and of possessing it ever more completely and profoundly.

102. The encyclical goes on to enumerate what is understood by the "duties" of every person. The list expressly includes the duty to respect the rights of others (para. 30); to work together for one another's welfare (paras. 31-33); and to act with a sense of responsibility (para. 34). Certain other duties are recognized implicitly in subsequent paragraphs. For example, with regard to the duties of the legally constituted authority, it is established by implication (para. 47) that such authority has a duty "to command according to right reason". With regard to the specific duties of such authorities, it states that "to safeguard the inviolable rights of the human person, and to facilitate the fulfilment of his duties, should be the essential office of every public authority" (para. 60).

103. It also emphasizes the need for relations between citizens and public authorities (para. 77) to be "set forth in terms of rights and duties", and for it to be clearly established that "the paramount task assigned to government officials is that of recognizing, respecting, reconciling, protecting and promoting the rights and duties of citizens".

104. A final point to mention in this context is that, in pleading for a society based on truth, this encyclical - which, in a world still recovering from the overwhelming experience of a real danger of imminent nuclear war only six months previously, attracted greater attention at the time for its pronouncements on international peace[60] - states that peace will truly have come when "reciprocal rights and duties [are] sincerely recognized" (para. 35).

F. Opinions of non-governmental organizations

105. As indicated elsewhere in this report,[61] the majority opinion among NGOs on this subject appears to be - or, at least, in recent times has appeared to be - that it is inappropriate to attempt to define a person's duties (or responsibilities), whether individually or in association with others, towards his or her community/society and towards those who live with the person in that community/society. The objections to such an exercise are perhaps understandable, although the Special Rapporteur certainly does not share this reticence, and in particular not the reluctance at the very least to attempt to examine more closely the need which others feel to define such responsibilities (or duties).

106. What seems to lie at the root of this reluctance is quite simply the fear that such definitions may be used to justify imposing limitations or constraints on the work of NGOs in promoting and protecting rights and freedoms in their own countries.

107. This is, of course, neither the best mechanism nor the most opportune moment for reopening a substantive debate on the question, but in the Special Rapporteur's view this discussion is one of a large number of matters still pending before the Commission. Suffice it to say for now that, in his opinion, what is at issue is the essential characteristics of the State, i.e. those characteristics which would determine whether the State is by its nature a Hobbesian

Leviathan of the kind referred to by Professor Szabo,[62] or whether it is possible to contemplate a different, far more liberal, kind of State. Moreover, as has already been said, these definitions would be applicable not at the level of legally enforceable obligations, but at the non-legal level of ethics and morality.

108. At the same time, although many of the NGOs sharing these apprehensions are based not in "Southern" but in "Northern" countries, there is no ignoring the fact that, as discussed above (paras. 66-86), the drafters of regional human rights instruments both in Latin America and the Caribbean and in Africa have deemed it feasible and appropriate to specify such duties and that, in Asia, countries such as India include and specify these responsibilities in their Constitutions, as well as describing - also in detail - the rights and freedoms of persons under their jurisdiction.

109. Moreover, no one can overlook the fact that there is at least one non-governmental organization of ample international credibility - and well attested as not being in the service of political or despotic interests, or remotely connected with what have come to be called "evil empires" (or "axes of evil") - that has recently felt the need to take on the task of preparing a universal declaration of human responsibilities.

110. This organization is, of course, the InterAction Council (IAC), an NGO with a secretariat based in Tokyo and founded in 1983 by the late Takeo Fukuda, a former Prime Minister of Japan. It has an impressive list of full and associate members and according to the information available, it is headed by former German Chancellor Helmut Schmidt (honorary president) and former Australian Prime Minister Malcolm Fraser (president), and also includes recognized academics, other politicians who have held the highest offices in countries on all continents, well-known journalists and senior religious figures.[63]

111. The declaration was adopted by the InterAction Council in April 1997 and was the outcome of the work of an expert group of three advisers, Professors Hans Kueng of Tübingen University, Thomas Axworthy of Harvard University and Kim Kyong-dong of the National University, Seoul. Their recommendations were put before IAC and the text was adopted at a meeting chaired by Helmut Schmidt himself. Experts involved in drafting the text included such eminent figures as Cardinal Franz Koenig of Vienna, Professors Hassan Hanafi of Cairo, Richard Rorty of Stanford and Meter Landesmann of Salzburg, and the journalist Flora Lewis.

112. The document contains 19 articles and is conceived as "not only a way of balancing freedom with responsibility, but also a means of reconciling ideologies and political views that were deemed antagonistic in the past. The basic premise should be to aim at the greatest amount of freedom possible, but also to develop the fullest sense of responsibility that will allow that freedom itself to grow". IAC's intention was to have had the text adopted by the General Assembly in 1998, to coincide with the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights.

113. The substantive section begins by establishing the following basic principles: every person has a responsibility to treat all people in a humane way, not to support any form of inhumane behaviour, and to strive for the dignity and self-esteem of others. It also declares that no one stands above good and evil; that all are subject to ethical standards and should promote good and avoid evil in all things; and that all should agree not to do to others what they do not

wish to have done to themselves. It also establishes responsibilities or duties to respect life, to promote peaceful solutions to disputes between States, not to participate in acts of terrorism, to protect the environment, to behave with integrity, honesty and fairness, and not arbitrarily to deprive others of their property.

114. The declaration furthermore includes the idea that economic and political power should be used not as an instrument of domination but in the service of economic justice and the social order. Everyone has a responsibility to speak and act truthfully, and it is necessary to accept codes of professional ethics. The freedom of the media should be used with responsibility and discretion and religious freedom entails a responsibility to avoid acts of discrimination towards those of different beliefs.

115. The document also establishes the responsibility to show respect and understanding towards those living in the same social environment. Lastly, it emphasizes that nothing in the text may be interpreted as implying for any State, group or person any right to engage in any activity aimed at the destruction of any of the responsibilities, rights and freedoms set forth therein or in the Universal Declaration of Human Rights.

116. In March 1998, the preparatory meeting for the sixteenth plenary session of IAC, held in Frankfurt, Germany, and chaired by Malcolm Fraser, noted that reactions to the declaration had been mixed and that there had been opposition from Governments, whose main objection was that adoption of the declaration would weaken the cause of human rights, from the Office of the United Nations High Commissioner for Human Rights, on the grounds that it could divert attention from other problems, and from a number of NGOs and "the Western media". For those reasons IAC decided to defer the proposed submission of the document to the United Nations General Assembly for adoption that year.

117. It should be emphasized that a number of experts of recognized prestige and reputation in this area also expressed the view that it would be inappropriate to proceed with the project. One of them is Professor Theo van Boven, who, in an article written at the time,[64] while acknowledging the good faith of the proponents of the universal declaration of human responsibilities, questioned whether emphasizing purely ethical or moral duties was the best way of addressing current globalization issues and whether it was fitting for the document to have been presented as a text mirroring in its form the Universal Declaration of Human Rights. He also pointed to the danger that some "totalitarian" regimes might take advantage of its provisions to hamper or thwart the efforts of those fighting for the promotion and protection of human rights and fundamental freedoms in their countries.

G. Views of some leading subject specialists

118. In addition to the works directly cited in this report (such as those of Karel Vasak, Héctor Faúndez Ledesma, Bertrand Ramcharan and Theo van Boven), the Special Rapporteur has had access to and examined many other works on the subject, including those of José Bengoa

(his Chilean colleague in the Sub-Commission on the Promotion and Protection of Human Rights), Andrew Clapham, Josiah A.M. Cobbah, Dato'P. Cumaraswami, Emitei Etzioni, Yash Ghai, Etienne R. Mbaya, Ignacio Ramonet, Marco Sassoli, Alex Y. Seita, John J. Tilley and others. There is still a large bibliography to be covered, including works by Latin American and Asian authors.

119. The Special Rapporteur believes that, rather than give a brief summary of its contents in this preliminary report, it would be better to make use of such collective wisdom in drafting the conclusions and recommendations to be submitted for the consideration of the Commission in the final report during the coming year.

Notes

[1] See the provisional summary record of the 65th meeting, E/CN.4/2000/SR.65, paras. 80-96. The most salient aspects of that discussion are detailed in E/CN.4/2001/96 (paras. 3 and 4 and notes 2-5).

[2] E/CN.4/2001/2-E/CN.4/Sub.2/2000/46, chap. I.

[3] Decision 2001/115 of 25 April 2001 and draft decision 46 recommended by the Commission for approval by the Council. See *Economic and Social Council, Official Records, 2001, Supplement No. 3* (E/2001/23-E/CN.4/2001/167), chap. II, sect. B, decision 2001/115, and chap. I, draft decision 46, respectively.

[4] It should be noted that the roll-call vote revealed a clear geographical polarization in the Commission. With hardly any exceptions (only two abstentions), the "Southern" countries voted *in favour* of the Sub-Commission's initiative, whereas, also with only two exceptions, the "Northern" countries (Belgium, Canada, Czech Republic, France, Germany, Italy, Japan, Latvia, Poland, Portugal, Romania, Spain, United Kingdom and United States of America) voted *against*. Costa Rica, Guatemala, Norway and the Republic of Korea *abstained*. The delegation of Liberia was not present at the time of the vote.

[5] E/CN.4/2001/96, paras. 38 ff.

[6] The Commission on Human Rights working group on the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms.

[7] See paragraph 92 *infra*.

[8] E/CN.4/2001/96, paras. 41 and 42.

[9] *Diccionario de la lengua española*, 22nd ed., Madrid, Espasa Calpe, 2001. Accessible via the Internet at www.rae.es.

[10] Something very similar applies to the corresponding terms in English and French. The *Merriam-Webster's Collegiate Dictionary* (accessible via the Internet at www.britannica.com/dictionary) likewise includes the notion of "obligation" both in relation to the word "duty" (3-a: A moral or legal obligation) and with respect to the term "responsibility" (1-a: Moral, legal or mental accountability). For its part, the most recent edition of the *Dictionnaire Larousse* (pp. 333 and 993) defines the words "*devoir*" and "*responsabilité*", respectively, as follows: "1. *Ce à quoi on est* obligé *par* la morale, *la religion*, la loi, *la raison, etc.*" and "Obligation *de répondre de ses actions, de celles des autres, ou d'être garant de quelque chose*" (Special Rapporteur's emphasis).

[11] In the official English version of this same preambular paragraph of the Covenants, what such "duties" create is not an "obligation" (the word that would correspond, literally, to the Spanish version), but a "responsibility". One notable recent example of the use of the terms "duties" and "responsibilities" interchangeably in the field of human rights is the official translation given by the specialist services of the United Nations to the name of the working group established in 1985 by the Economic and Social Council, in its decision 1985/112 of 14 March 1985, for the purpose of preparing a draft declaration on the activities of persons referred to as "human rights defenders". In this case the English term "responsibility", as used in the original text (in that same language) approved by the Commission and the Council, was translated into Spanish as "*deber*" ("duty") and not as "*responsabilidad*". See, for example, document E/CN.4/1994/81.

[12] That concept would, of course, include the international obligations duly acquired in the field of human rights by the State concerned.

[13] Article 29, paragraph 1, of the Declaration states: "Everyone has duties to the community in which alone the free and full development of his personality is possible." The fifth common preambular paragraph of the two International Covenants on Human Rights (1996) reads as follows: "*Realizing* that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant."

[14] The International Covenants on Human Rights are likewise silent in this respect.

[15] For example, more than a year before the adoption of the Universal Declaration, the representative of Egypt in the Commission, Mr. Obeid, had already voiced his concern that in the course of the debate until then "no mention had been made of the duties of the individual, which were a corollary to his rights" (quoted by Bertrand Ramcharan in "The universality of human rights" an article which appeared in *The Review* of the International Commission of Jurists, No. 58-59 [December 1997], pp. 105 ff). Since then, various Governments, including those of Poland, Chile and Finland, have stated that they do not consider it necessary to elaborate precise definitions for this general provision of the Universal Declaration, while others (like Cameroon, Cuba and Syria) have taken a radically different view. See, in this respect, E/CN.4/1993/64, paras. 71, 74, 80, 82, 95 and 110.

[16] This is the process which required 13 years of work in the Commission on Human Rights (between 1986 and 1998) to prepare the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, which was later adopted by the General Assembly through its resolution 53/144 of 9 December 1998. In the Special Rapporteur's view, articles 3, 17, 18, 19 and 20 of this Declaration - with the duties (or responsibilities) that are explicitly or implicitly defined for individuals, groups, organs of society and NGOs - are a step in the right direction, although a great distance still has to be covered in order to specify adequately such duties/obligations towards the community.

[17] The Special Rapporteur was witness to the feeling of frustration experienced by many different Government representatives during those deliberations when, notwithstanding their repeated questions directed to the delegations of participating NGOs - including requests for them to specify what they saw as their duties under article 29, paragraph 1, of the Universal Declaration of Human Rights - all those delegates taking the floor unhesitatingly stated quite clearly that no specific "duties" or "responsibilities" of any kind were considered as arising from the said provision of the Universal Declaration. In this connection see, for example, the statements of Amnesty International and the International Commission of Jurists in E/CN.4/1993/64, paras. 72, 79, 103 and 104.

[18] *The Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the Universal Declaration of Human Rights* (United Nations, 1982). The final report of this study appears in E/CN.4/Sub.2/432/Rev.2 (United Nations Publication, Sales No. E.82.XIV.1).

[19] The references made to the work of Mrs. Daes later in this report have been drawn from chapters I (General Observations) and II (Conclusions) of part one (Duties of the individual to the community) of her final report.

[20] See, for example, the proposal contained in document G/7 (g) (2) submitted to the United Nations Conference on International Organization (Conference of San Francisco, April-June 1945), which set forth a declaration on the essential rights of man, which was to be appended to the Charter and become an integral part thereof, and in which it is recognized that "freedom requires the fulfilment by individuals of their duties as members of society". The Conference did not proceed with this proposal, stating that it required more detailed consideration. Quoted by Daes, op.cit., paras. 8 to 10 and note 2.

[21] As Mrs. Daes herself explains (op. cit., para. 12), this was also clearly the view of the United Nations Secretariat in 1947, when in its "draft outline of an international bill of human rights" it proposed - as one of the principles for inclusion in the text - recognition of the fact that "man does not have rights only; he [also] owes duty to the society of which he forms part". See E/CN.4/21, Annex E, p. 69 (quoted by Daes, op. cit., note 4).

[22] See, for example, the wordings reproduced contained in Daes, op. cit., paras. 11, 13, 14, 15 and 17, none of which were approved.

[23] E/CN.4/SR.50, p. 16 (quoted by Daes, op.cit., note 12).

[24] See A/C.3/304/Rev.2. This document contains all the respective amendments submitted during the third session of the General Assembly (1948). Mentioned in Daes, op. cit., note 17.

[25] Daes, op. cit., para. 29.

[26] Ibid., para. 30.

[27] Ibid., paras. 48 to 63.

[28] Ibid., paras. 61 and 62.

[29] It should be remembered that in those years the prevailing view on how to give a legally enforceable character to the contents - by definition not binding - of the Universal Declaration already approved was to draft *a single legal instrument*, and not to adopt two covenants, as the General Assembly finally deemed more appropriate in 1951, in its resolution 543 (VI).

[30] In the specialized literature on the subject published in the first years after the entry into force of the International Covenants on Human Rights, it was not uncommon to find references to the lack of such a definition both in the Covenants and in the Universal Declaration of Human Rights - a reflection, it would appear, of the importance attached to this lacuna. See, for example, Imre Szabo, "Historical Foundations of Human Rights and Subsequent Developments", in Karel Vasak (ed.), *The International Dimensions of Human Rights* (UNESCO, Paris, 1982, Vol. I, p. 11). Professor Szabo seemed at the time to be concerned partly by the fact that what results from focussing solely on defining the rights of the individual "is the idea of an evil, execrable, threatening State, a modern Leviathan, and not a democratic State, careful, by virtue of its nature, to respect human rights", and partly also by the fact that the question had already been left to be dealt with in the framework of international law.

[31] Daes, op. cit., part one, chapter II, paras. 171 ff.

[32] Ibid., paras. 230-274. It should be borne in mind that, in paragraph 102 of the final report of her study, the Special Rapporteur also gave a particularly wide meaning to the word "community", very similar to the one which this Special Rapporteur attaches to it in paragraph 31 of this preliminary report.

[33] Mrs. Daes recognizes the difficulties presented by this term, inter alia, because of the possible different interpretations that it may warrant, for example, in countries with varying levels of development. She tells us, moreover, that "the general welfare by itself has no meaning; its purpose is to promote man's dignity and well-being", although she does say that it is something quite different from "reason of State" (Daes, op. cit., paras. 250 and 251).

[34] After a lengthy analysis of the complex question of the duties (or obligations) which derive from obedience to the law, Mrs. Daes appears to conclude that this duty would arise only in a "model democratic community" where "no [essential] rights [...] have been infringed"

(ibid., para. 265). Furthermore, on the important issue of duly obeying "superior orders", Mrs. Daes concludes that this question "is governed by the major principle that members of the armed forces [...] are bound to obey lawful orders only" (ibid., para. 269).

[35] Ibid., paras. 248 and 249. This is presumably a duty to the international legal community.

[36] Ibid., paras. 275 to 303. In her final report, reference is made to other duties (or responsibilities) flowing from recognition of the rights to work (paras. 308 to 320) and to education (paras. 321 to 328) or from a specific legal status in society (for example, duties of aliens (paras. 329 to 333) and duties of refugees and stateless persons (paras. 334 to 337)) or those provided for by national legislation (paras. 338 to 340). It should be pointed out that, in many cases, such "duties" (or "responsibilities") correspond to what in this interim report are considered not in those terms but as legally enforceable "obligations". Furthermore, Mrs. Daes considers that while the individual "has to learn of his rights and duties", it must be pointed out to begin with that "the community (in this case notably the State) has first and foremost to recognize its duty towards the individual". She cites, by way of example to support this statement, various articles of the Constitution of Portugal then in force (para. 103 and note 77).

[37] Ibid., chapter III, para. 341, section B.

[38] *Records of the UNESCO General Conference, Twenty-ninth Session, Paris, 21 October to 12 November 1997 (Vol. 1, Resolutions)*, Transdisciplinary projects; resolution No. 44, pp. 69 ff.

[39] Ibid., preamble, paras. 4, 6-8, 10-13 and 14.

[40] The Special Rapporteur interprets these terms as encompassing *all* members of both "present" and "future" generations, without distinction, in the same sense as mentioned above, in paragraph 31 of this preliminary report.

[41] See the Act of Chapultepec, adopted at the Inter-American Conference on Problems of War and Peace, *International Conferences of American States, Second Supplement, 1942-1954* (Washington, D.C., Pan American Union, 1958), pp. 52 ff. Cited by Héctor Faúndez Ledesma, *El sistema interamericano de protección de los derechos humanos. Aspectos institucionales y procesales*, 2nd ed. (Instituto Interamericano de Derechos Humanos, San José, Costa Rica, 1999), n. 44.

[42] For the text, see Faúndez Ledesma, op. cit., annexes, pp. 643-650. It may be noted that it was adopted seven months before the Universal Declaration of Human Rights (10 December 1948).

[43] Mrs. Daes reminds us, in the final report of her memorable study, that Friedrich Engels, despite his apparent geographical and temporal distance, "when subjecting the Erfurt Draft Programme of 1891 to criticism, objected to it for the very reason that it contained statements on equal rights but remained silent on duties" and that he and Karl Marx had in mind a society and State in which the unity of rights and duties would be accomplished. She also notes that the same idea was expressed in the "Statutes of Organization of the International Federation of

Labour, which were drawn up by Marx and adopted by the Conference of the Federation in 1871", and which proclaimed that "there shall be no rights without duties and no duties without rights". Daes, op. cit., paras. 107 and 108.

[44] The American Convention on Human Rights was signed by 12 Latin American States on 22 November 1969, at the Inter-American Specialized Conference on Human Rights, which was hosted by the Organization of American States (OAS) and held in San José on 17-22 November 1969. It entered into force on 18 July 1978, in accordance with the provisions of article 74, paragraph 2. By mid-1999, 23 States of the region were parties to the Convention. For the text, see United Nations, *Treaty Series*, vol. 1144, No. 17955.

[45] Op. cit., p. 87.

[46] For the text of the Banjul Charter, see United Nations, *Treaty Series*, vol. 1520, No. 26363. The Spanish version may be consulted in *Compilación de instrumentos jurídicos internacionales: Principios y criterios relativos a refugiados y derechos humanos* (Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados, San José, Costa Rica, 1992), pp. 249-265.

[47] Document ST/HR/1/Rev.5 (Vol. II). Office of the United Nations High Commissioner for Human Rights, New York and Geneva, 1997. Also available as a United Nations publication: Sales No. E.97.XIV.1. The English text of the Cairo Declaration can be found on pages 478 ff. All references to the Declaration in the Spanish original of this report are unofficial translations by the Special Rapporteur.

[48] The States were: Austria, Barbados, Bolivia, Byelorussian Soviet Socialist Republic, Ecuador, Federal Republic of Germany, German Democratic Republic, Ghana, Greece, Hungary, Iraq, Israel, Japan, Luxembourg, Mauritius, Morocco, Pakistan, Senegal, Somalia, Sri Lanka, Sweden, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics and Venezuela. Their responses are given in Daes, op. cit., para. 64.

[49] Barbados, Bolivia, Byelorussian Soviet Socialist Republic, Ecuador, German Democratic Republic, Greece, Hungary, Iraq, Morocco, Pakistan, Senegal, Somalia, Thailand, Ukrainian Soviet Socialist Republic and Union of Soviet Socialist Republics.

[50] See Daes, op.cit., para. 66. Among other examples, the study mentions that title VIII of the Constitution of Costa Rica of 7 November 1949 refers to "Political rights and duties"; article 8 of the Fundamental Law of Cuba of 7 February 1959 states that "citizenship involves duties and rights"; title I of the Spanish Constitution of 1978 is entitled "On Basic Rights and Duties" and article 35 refers to work as a right and duty of all Spaniards, while article 45 provides that everyone has the right to enjoy a suitable environment as well as the duty to preserve it; and the Italian Constitution of 1947, as amended up to 1963, clearly states in article 2 that "The Republic recognizes and guarantees the inviolable rights of man [...] and imposes the performance of unalterable duties of a political, economic and social nature".

[51] See supra.

[52] Among the "Southern" delegations most actively involved in the subject were those of Cameroon, China, Cuba, Malaysia, Mexico and the Syrian Arab Republic; while the delegations of Canada, the Netherlands, Portugal, Sweden, the United Kingdom and the United States of America were the foremost defenders of the Northern countries' positions. The Northern countries' points of view were very similar - indeed, frequently identical - to those of the NGO observer delegations, of which those of Amnesty International, the Carter Centre, the International Commission of Jurists and the International Federation of Human Rights were very much involved. See details in the annual reports to the Commission of the Working Group referred to in note 6 above; documents E/CN.4/1993/64, E/CN.4/1994/81, E/CN.4/1995/93, E/CN.4/1995/93, E/CN.4/1996/97, E/CN.4/1997/92 and E/CN.4/1998/98.

[53] All references to Holy Scripture in the Spanish original are taken from the *Traducción del Nuevo Mundo de las Sagradas Escrituras* (Watchtower Bible and Tract Society of New York, Brooklyn, 1967). See the books of Isaiah, Jeremiah and Hosea.

[54] Luke 10: 25-37.

[55] James 5: 1-6.

[56] See Walter M. Abbott, S. J. (ed.), *The Documents of Vatican II* (American Press), pp. 199 ff.

[57] Of particular importance is the language used in this paragraph, which reads: "But human freedom is often crippled when a man encounters extreme poverty just as it withers when he indulges in too many of life's comforts and imprisons himself in a kind of splendid isolation. Freedom acquires new strength, by contrast, when a man consents to the unavoidable requirements of social life, takes on the manifold demands of human partnership, and commits himself to the service of the human community."

[58] These encyclicals and other documentation relating to the Catholic Church are accessible via the Internet: www.vatican.va/index.htm.

[59] This fundamental right is described in the following terms: "Beginning a discussion of the rights of man, we see that every man has the right to life, to bodily integrity, and to the means which are necessary and suitable for the proper development of life; these are primarily food, clothing, shelter, rest, medical care, and finally the necessary social services. Therefore a human being also has the right to security in cases of sickness, inability to work, widowhood, old age, unemployment, or in any other case in which he is deprived of the means of subsistence through no fault of his own."

[60] In this encyclical, promulgated on 11 April 1963, Pope John XXIII was arguing for international relations based on moral law, truth, justice, international law and freedom and he reminded the "wealthier States" that, in providing assistance to less developed countries, it was "vitally important" to respect the moral values and characteristics peculiar to each people and to "avoid any intention of political domination".

[61] See, for example, notes 16 and 17 supra, and the statements from NGOs contained in the annual reports listed in note 52 supra.

[62] See note 30 supra.

[63] All InterAction Council documentation, including a list of members, experts and other associates and the text of the "Universal Declaration of Human Responsibilities", is available in several languages via the Internet (www.asiawide.or.jp/iac).

[64] "A Universal Declaration of Human Responsibilities?", in *Reflections on the Universal Declaration of Human Rights, A Fiftieth Anniversary Anthology*, published under the auspices of the Ministry of Foreign Affairs of the Netherlands. Martinus Nijhoff (The Hague, 1998), pp. 73 ff.

Appendix

Questionnaires on the duties and responsibilities of the individual

The following questionnaires are intended to be sent to States Members of the United Nations, to non-members States with permanent observer missions at United Nations Headquarters or the United Nations Office at Geneva, and to other relevant bodies and organizations invited to participate on a permanent basis in the work of the General Assembly, and also to non-governmental organizations in consultative status with the Economic and Social Council.

A. Questionnaire for States and relevant bodies and organizations

1. What, in the opinion of your Government, are the duties or responsibilities that every person has towards the community in which he or she lives, and towards other individuals living in that same community, under article 29, paragraph 1, of the Universal Declaration of Human Rights and the fifth and last common preambular paragraph of the two International Covenants on Human Rights?

2. Does the current legislation of your country, including the Constitution, contain any provision referring to such duties or responsibilities as understood in non-legal terms only, and not as statutory and legally enforceable obligations for persons under the jurisdiction of the State?

B. Questionnaire for relevant non-governmental organizations

1. What, in the opinion of your organization, are the duties or responsibilities that every person has, individually or in association with others, towards the community in which he or she lives, and towards other individuals living in that same community, under article 29, paragraph 1, of the Universal Declaration of Human Rights and the fifth and last common preambular paragraph of the two International Covenants on Human Rights?

2. What specific activities, in the opinion of your organization, might individuals, groups, organs of society and non-governmental organizations undertake in order to fulfil their responsibility to safeguard democracy, promote human rights and fundamental freedoms and contribute to the promotion and development of democratic institutions, processes and societies, and to assist in the realization of every person's right to the establishment of a social and international order in which the rights and freedoms proclaimed in the Universal Declaration are fully observed?

3. Has your organization carried out in any of those possible activities mentioned in the preceding question in the last five years? If so, please describe briefly the activity and its outcomes.

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PROMOTION AND PROTECTION OF HUMAN RIGHTS: STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Question of the death penalty

Note by the Secretariat

1. In its resolution 2001/68, the Commission on Human Rights requested the Secretary-General to continue to submit to the Commission, at its fifty-eighth session, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement on changes in law and practice concerning the death penalty worldwide to his quinquennial report on capital punishment and implementation of the Safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the death penalty against persons younger than 18 years of age at the time of the offence.

2. The quinquennial reports on capital punishment and implementation of the Safeguards guaranteeing the rights of those facing the death penalty have been prepared under the auspices of the Centre for International Crime Prevention at the United Nations Office in Vienna (formerly the Crime Prevention and Criminal Justice Division of the Secretariat). To date, six

such reports have been submitted to the Economic and Social Council. The most recent one (E/2000/3) was submitted to the Council at its substantive session of 2000, to the Commission on Crime Prevention and Criminal Justice at its ninth session and to the Commission on Human Rights at its fifty-sixth session.

3. In May 2001, a revised, updated version of the sixth quinquennial report, finalized in April 2001, was submitted to the Economic and Social Council and to the Commission on Crime Prevention and Criminal Justice at its tenth session (E/CN.15/2001/10).

4. In view of the fact that the substantially updated version of the sixth quinquennial report was finalized only in April 2001, the Secretariat believes it is appropriate to submit as a background document this updated report to the Commission in response to its request in resolution 2001/68.